

- (i) filing a copy with the Regulator, who shall publish the reference interconnection offer on the Regulator's official web site;
  - (ii) making a copy available to the public in the dominant service provider's principal business offices; and
  - (iii) sending a copy to any service provider on request.
- (2) Every reference interconnection offer shall:
  - (a) comply with any rules or orders applicable to interconnection, including any applicable guidelines for the form and content of a reference interconnection offer established by order of the Regulator; and
  - (b) include a full list of services to be supplied to service providers, setting out the associated terms and conditions, including the charges for each service.

**38. Publication of Interconnection Agreements-**(1) Every dominant service provider designated in accordance with section 34 shall, within ten (10) days after execution of an interconnection agreement, file a copy of the agreement with the Regulator.

(2) Subject to subsections (3), (4) and (5), the Regulator shall place a copy of all interconnection agreements filed with the Regulator in accordance with subsection (1) on the Regulator's official web site.

(3) Subject to subsections (4) and (5), a service provider may designate information contained in an interconnection agreement that the service provider has filed with the Regulator in accordance with subsection (1) as confidential, and request that such confidential information be excluded from the copy of the interconnection agreement placed on the Regulator's official web site.

(4) For the purposes of this section:

- (a) details of interconnection charges shall not be considered confidential unless they are within a

range that has previously been approved by the Regulator; and

- (b) essential terms and conditions of interconnection, other than interconnection charges, shall not be considered confidential.

(5) The Regulator shall determine what other information shall be treated as confidential under this section and resolve in a final and binding manner all disputes regarding disclosure of information designated as confidential in interconnection agreements submitted to the Regulator under this section.

**39. Non-compliant Interconnection Agreements**—If the Regulator decides that an interconnection agreement is not in compliance with this Act, or the requirements of any regulation, rule, order or licence, the Regulator may issue an order requiring one or more of the parties to the interconnection agreement to amend the agreement in accordance with any directions or other requirements specified in the order.

## **PART VIII**

### **TARIFFS**

**40. Tariff Filing and Approval**—(1) Dominant service provider shall file with and obtain the approval of the Regulator for all tariffs, rates or charges for telecommunications services in markets the Regulator has designated then as dominant.

(2) The Regulator may issue an order to remove any requirement for dominant service providers to file and obtain approval of tariffs under this Part where the Regulator determines that:

- (a) competitive market forces will be sufficient to protect the interests of customers;
- (b) there is not a significant risk of harm to competitive markets as a result of the removal of the requirement to file and obtain approval of tariffs;
- (c) in the case of Telecom Samoa Cellular Limited, tariffs are not required to be filed for services that company was licensed to provide under a licence issued before the coming into force of

this Act, if the licence provides that the tariffs are not subject to regulatory approval.

(3) Tariffs for telecommunications service provided by the dominant service providers shall be based on the cost of efficient service provision and shall not contain excessive charges which are made solely as a result of the service provider's dominant position.

(4) The Regulator may issue an order to require a change in the tariffs for telecommunications services provided by a dominant service provider where such tariffs are in contravention of subsection (3). Such an order shall nominate the new tariff amount and give reasons for the required change.

(5) Tariffs that are subjects to filing with and approval by the Regulator under this section shall enter into force only after they have been approved by an order of the Regulator. Any agreement or arrangement between service providers and any customer to apply such a tariff, other than one approved by the Regulator, is prohibited and, despite any other law, shall be regarded for all purposes as null and void.

(6) Unless the Regulator makes an order to the contrary, a dominant service provider shall not be required to file or obtain approval of tariffs for services that are provided in markets where the service provider is not designated to be a dominant service provider.

(7) A service provider shall not charge for a accept tariffs, rates, charges, other consideration or impose terms or conditions that are contrary to the provisions of an applicable tariff approved by the Regulator.

**41. Publication of Tariffs-**(1) Unless the Regulator orders otherwise, when a dominant service provider files a tariff or schedule of tariffs with the Regulator, the service provider shall:

- (a) from the date on which the tariff or schedule of tariffs is filed until the tariff is approved:
  - (i) publish an electronic copy on the service provider's web site; and
  - (ii) maintain a paper copy available to the public at the service provider's main business offices; and

- (b) within ten (10) days from the day on which the tariff or schedule of tariffs is filed, place a notice in Samoan and English in the Savali and one other newspaper circulating in Samoa detailing the tariff or schedule of tariffs and advising that such tariff or schedule is subject to the Regulator's approval.

(2) Unless the Regulator orders otherwise, a dominant service provider shall maintain a complete and up to date schedule of its Regulator approved tariffs:

- (a) in an electronic copy on the dominant service provider's web site; and
- (b) in a paper copy available to the public at the dominant service provider's main business offices.

**42. Tariffs for Services to Other Service Providers** – Tariffs charged by a dominant service provider to other service providers:

- (a) shall be filed with and subject to approval by the Regulator in accordance with section 40; and
- (b) shall comply with any orders made by the Regulator in relation to such tariffs.

**43. General Principles for Tariff Regulation-(1)** The Regulator may issue an order to adopt any approach to tariff regulation of service providers that is consistent with this Act, including, but not limited to, price cap regulation, rate-rebalancing and other forms of cost-based regulation.

(2) The Regulator shall not regulate the tariffs of a service provider so as to deny that service provider the right to earn a reasonable return on the service provider's investment for the service provider's tariff-regulated services.

**44. Cost Studies-(1)** Subject to subsection (3), the Regulator may issue an order to require a dominant service provider and other specified service providers to prepare, file or otherwise participate in the development of a cost study of the dominant service provider's telecommunications services if the

Regulator determines that a cost study would be an effective and necessary means of preventing anti-competitive conduct or would otherwise be effective and necessary in implementing any scheme of tariff regulation.

(2) Where the Regulator requires a service provider to prepare or file or otherwise participate in the development of a cost study:

- (a) the service provider shall file with the Regulator a study of the service provider's costs of providing the different categories of service;
- (b) the Regulator shall issue an order on the cost categories, form, approach, procedures and timing of the cost study; and
- (c) the purpose of the cost study shall be to determine the costs to the service provider of providing different types of telecommunications services.

(3) The Regulator shall consult with any service provider the Regulator proposes to be required to prepare or file a cost study before the regulator makes an order under subsection(1)

**45. Price Cap Regulation Method-(1)** subject to subsection (4), the Regulator may issue an order to require a service provider to propose or otherwise participate in the development of a method of price cap regulation.

(2) where the Regulator requires a service provider to propose a method of price cap regulation:

- (a) the service provider shall file with the Regulator a proposal for implementation of a method of price cap regulation of the service provider's service tariffs; and
- (b) the proposal shall identify the proposed starting tariffs for relevant services, proposed groupings or baskets, the application of price cap formulas and the specific proposed price cap formulas for price cap regulation.

(3) The Regulator may issue an order:

- (a) prescribing guidelines for the development of a proposal for a method of price cap regulation; or

- (b) setting out directions for the further development of a proposal that has been filed with the Regulator.
- (4) The Regulator shall consult with the service provider the Regulator proposes to be required to propose a method of price cap regulation before the Regulator makes an order under subsection (1).

**PART IX**  
**RELATIONS BETWEEN SERVICE PROVIDERS**  
**AND CUSTOMERS**

**46. Application-**(1) Subject subsection (2), the provisions of the following sections of this Part shall apply only to SamoaTel and its successor entities and to any other licensee of fixed public voice telephone services.

- (a) Section 52 - Customer Complaints;
- (b) Section 54 - Terms of Service;
- (c) Section 55 - Information on Terms of Services;
- (d) Section 56 – Telephone Directories;
- (e) Section 57 – Quality of Service; and
- (f) Section 58 – Access to Customer Premises.

(2) Where the Regulator considers that an amendment or requirement is consistent with the provisions of this Act, the Regulator may, by order:

- (a) amend the provisions of this Part which apply to SamoaTel and its successor entities and any other licensee of fixed public voice telephone services; and/or
- (b) require any service provider to comply with nominated provisions of this Part and, in such an order, may determine the types of services to which such nominated provisions shall apply.

**47. Fair Dealing Practices-**(1) A service provider shall only charge a customer for the specific telecommunications service or equipment that the customer has ordered. The customer shall have no liability to pay for any telecommunications service or equipment that the customer has not ordered.

(2) Service providers shall provide customers with invoices:

- (a) in writing (although invoices may be provided electronically if the customer consents);
- (b) on a regular basis;
- (c) in a plain and simple format;
- (d) that provide accurate information on the services provided and the amounts due for each service;
- (e) that clearly indicate the method of calculation of tariffs for any service for which invoices are based on the length of calls or other measure of usage; and
- (f) that comply with this Act and any regulations, rules and orders dealing with customer invoices.

(3) Service providers shall retain accurate records of all customer invoices for a period of at least 6 months from the billing date and make such records available to the Regulator upon request.

(4) Where the Regulator has a concern about billing systems or practices, the Regulator may require service providers to public information on billing systems or practices or to take such other steps relating to a service provider's billing systems or practices as the Regulator may consider appropriate.

(5) No service provider shall make, or cause to be made, any false or misleading claim or suggestion regarding:

- (a) the availability, price or quality of the service provider's telecommunications services or equipment; or
- (b) the telecommunications services or equipment of another service provider.

(6) For the purposes of section 47(5), a claim or suggestion is misleading if, at the time the claim or suggestion was made, the service provider knew or reasonably ought to have known that such claim or suggestion was false or misleading in any material respect or that such claim or suggestion was reasonably likely to confuse or mislead the person to whom the claim or suggestion was made.

(7) The Regulatory may issue an order to regulate or prohibit the use by any person, whether or not that person is a

service provider, of the telecommunications network of a service provider to provide unsolicited telecommunications, to the extent that the Regulator considers such order necessary to reduce or eliminate the nuisance caused by such telecommunications.

(8) Wherever a conflict arises between the interpretation or application of any provision of this Act and the Consumer Information Act 1988 or the Fair Trading Act 1998, the provisions of this Act shall be interpreted and applied to prevail over such Acts.

**48. Confidentiality of Customer Information-**(1) Subject to this Act, a service provider shall not disclose information concerning a customer without the customer's written consent or unless disclosure is required or permitted by the Regulator or by law.

(2) Upon request, a customer is permitted to inspect any service provider's records regarding the customer's service. A customer shall have the right to require that any customer information about such customer contained in a service provider's records that the customer can demonstrate is incorrect, be corrected or removed by the service provider.

(3) Subject to subsection (4), all customer-specific information, and in particular billing-related information, shall be retained by a service provider only for billing purposes or other lawful purpose, and retained only for so long as is permitted by rule made by the Regulator, or as otherwise permitted by law.

(4) A service provider may, with the written approval of the Regulator, use customer-specific information for purposes other than those set out in subsection (3), including, but not limited to, marketing and sales of additional services.

**49. Confidentiality of Customer Communications-**(1) Service providers shall take all reasonable steps to ensure the confidentiality of customer communications.

(2) Service providers shall not intercept, monitor, alter or modify the content of a customer communication, except as



provided for in subsection (3) or sections 69 and 70 or otherwise in this Act.

(3) For the purposes of tracing and locating a source of harassing, offensive or illegal calls, or as otherwise provided under the laws of Samoa:

- (a) a customer may make a direct request to a service provider to monitor calls to the customer's telephone;
- (b) where a customer is not satisfied that a service provider is monitoring calls to the customer's telephone in response to a request to do so by the customer, the customer may request that the Regulator issue an order that directs a service provider to monitor calls to the customer's telephone;
- (c) the Regulator or other duly authorized authority in Samoa may direct a service provider to monitor calls to and from a customer's telephone and the service provider shall comply with any such direction;
- (d) the service provider shall provide the Regulator or other duly authorized authority in Samoa the information resulting from the service provider's monitoring of the customer's telephone, including the telephone numbers that are the source of the harassing, offensive or illegal calls and the times and dates of occurrence of such calls; and
- (e) the Regulator may undertake any appropriate action to protect the public from harassing, offensive or illegal calls in accordance with this Act, and if necessary refer the matter to other appropriate authorities for further action.

**50. Protection of Personal Information-(1)** A service provider shall be responsible for customer information and customer communications in the custody or control of the service provider or the service provider's agents.

(2) A service provider shall operate the service provider's telecommunications network with due regard for the privacy of the service provider's customers. Except as permitted or required by law, or with the consent of the person to whom the personal information relates, a service provider shall not collect, use, maintain or disclose customer information or customer communication for undisclosed purposes.

(3) The purposes for which customer information is collected by a service provider shall be identified at or before collection, and a service provider shall not, subject to this section, collect, use, maintain or disclose customer information for undisclosed purposes.

(4) Service providers shall ensure the customer's information is accurate, complete and up to date for the purposes for which the information is to be used.

(5) Service providers shall ensure that customer information and customer communications are protected by security safeguards that are appropriate to the sensitivity of such information and communications.

**51. Access by Government Authorities**—Nothing in this Act shall be interpreted to prohibit or infringe upon the rights of the Government, Government Agencies and Authorities to exercise their rights to access otherwise confidential information or communications relating to a customer. Such access shall be made in accordance with the laws of Samoa.

**52. Customer Complaints**—(1) Service providers shall identify a specific person or group of persons to receive complaints from customers other than service providers.

(2) Service providers shall establish procedures to deal with complaints of customers other than service providers. The procedures, and any amendments thereto, shall be subject to approval by the Regulator. The procedures shall be published in a suitable manner that is approved by the Regulator.

(3) Disputes between a service provider and a customer, or between service providers, which the parties cannot resolve among themselves, shall be subject to sections 71, 72 and 73.

(4) Service providers shall not disconnect or otherwise change any of the telecommunications services then being provided to a customer and which are the subject of a complaint or dispute, other than in accordance with the Terms of Service approved by Regulator pursuant to section 54 or as permitted by order made by the Regulator.

**53. No Unjustified Discrimination-**(1) Unless otherwise specifically permitted by the Regulator, dominant service providers shall offer all customers the same terms and quality of service, including tariffs charged, unless different terms are objectively justified, based on differences in supply conditions, including different costs or a shortage of available facilities or resources.

(2) A dominant service provider shall be obliged to justify any different terms and quality of service under subsection (1) to the satisfaction of the Regulator, or to cease the practice upon receipt of an order from the Regulator requiring the dominant service provider to do so.

**54. Terms of Service-**(1) The Regulator may issue an order requiring a service provider to submit draft Terms of Service to the Regulator for approval. The order shall specify the schedule for preparation, approval and implementation of the Terms of Service.

(2) Draft Terms of Service must be consistent with this Act, the rules, licence conditions and orders made by the Regulator, and shall describe the basic terms of the business relationship between the service provider and the service provider's customers in the provision and use of telecommunications services

(3) The Regulator shall approve all draft Terms of Service, with or without changes made by the Regulator, after consultation with the service provider and other interested parties, as determined by the Regulator. Once approved, these Terms of Service will replace the customer Terms of Service then in use by a service provider and shall become binding on the service provider and the service provider's customers.

(4) The Regulator may issue an order discontinuing a requirement for service providers to submit draft Terms of Service to the Regulator for approval where the Regulator determines that such approval is no longer required to protect the interests of customers.

**55. Information on Terms of Service-(1)** A service provider designated pursuant to section 46 shall at all times maintain on the service provider's web-site, in both Samoan and English, the following information:

- (a) the current version of the service provider's Terms of Service;
- (b) all of the service provider's approved tariffs and proposed tariff changes which have been filed with the Regulator, in accordance with section 40;
- (c) the official web site address and other contact information for the Regulator, together with a clear statement that the service provider is regulated by the Regulator under this Act and that customers and other service providers may contact the Regulator if they are unable to resolve disputes with the service provider; and
- (d) an easy to follow navigation system that allows a customer to locate the above information.

(2) A service provider designated pursuant to section 46 shall maintain current paper copies of the service provider's Terms of Service, all of its approved and pending tariffs and the other information described in subsection (1)(c) at all of the service provider's business offices, and such document shall be made available for public inspection, without charge, during normal business hours.

(3) If required by an order of the Regulator, a service provider shall include the current version of the service provider's Terms of Service, a reference to copies of the service provider's approved and pending tariffs being available for inspection at the service provider's business offices and the other information described in subsection (1)(c) in the

introductory pages to every telephone directory published by the service provider or on behalf.

(4) A service provider designated pursuant to section 46 shall provide, upon request and at a reasonable charge, paper copies of the service provider's schedule of approved tariffs to any customer who requests them.

**56. Telephone Directories**—If required by an order of the Regulator, a service provider shall provide customers with a telephone directory in accordance with terms and conditions as the Regulator may nominate in the order from time to time.

**57. Quality of Service**—(1) A service provider designated pursuant to section 46 shall provide telecommunications services that meet specific quality of service standards. These standards shall be developed by the Regulator in consultation with the service provider and may be included in the service provider's licence or established by order of the Regulator.

(2) The Regulator may amend, add or delete quality of service standards established pursuant to subsection (1), following consultation with the affected service provider.

(3) When quality of service standards have been established pursuant to subsection (1), a service provider shall deliver written reports to the Regulator each quarter, in accordance with the following:

(a) Quality of service reports shall:

(i) be in a form determined by the Regulator; and

(ii) set out the service provider's actual results for each quality of service standard; and

(b) Where a quality of service report indicates that a standard has not been achieved, the service provider shall provide an explanation to the Regulator as to why the standard was not achieved and what specific steps the service provider has taken or intends to take to achieve the standard.

(4) The Regulator shall advise a service provider, within thirty (30) days of receipt of any quality of service report, whether the Regulator accepts the explanation provided for any standard that was not achieved. If the Regulator does not reply within in the thirty (30) day period, the explanation provided is deemed accepted.

(5) If the Regulator does not accept the explanation under subsection (4), the Regulator shall issue an order setting out the additional steps that the service provider shall take and the time within which those steps shall be taken for the service provider to achieve such standards, including but not limited to:

- (a) any additional reporting requirements the service provider shall adhere to until the standard is achieved; and
- (b) what, if any, specific refunds or other customer remedies are to be implemented by the service provider as a result of the service provider's failure to meet such standard.

(6) When a service provider files a quality of service report or any additional related material with the Regulator, the service provider shall also publish the report on the service provider's web site. Upon receipt of a quality of service report or any additional related material from a service provider, the Regulator shall also post the report on the Regulator's reporting requirements.

(7) Where the Regulator concludes that it is in the public interest, the regulator may require a service provider to publish in Samoan and English in the Savali and one other newspaper circulating in Samoa all or parts of the service provider's quality of service reports and the Regulator's reporting requirements.

**58. Access to Customer Premises-(1)** The service obligations of a service provider designated pursuant to section 46 shall extend to the installation, operation, maintenance and repair in good working order of all telecommunications facilities that are owned or provided by the service provider and located on the customer's property.

(2) A service provider shall have the right to enter a customer's premises or property if the service provider's telecommunications facilities are located within the customer's premises on the following conditions:

- (a) the service provider has given the customer notice that is reasonable in the circumstances;
- (b) the service provider dispatches only properly identified and qualified personnel;
- (c) the service provider has received the consent of the customer for such access; and
- (d) the service provider's personnel interfere as little as possible with the customer's activities, premises and property.

**59. Liability, Refunds and Damages**—The Regulator may issue an order or rule establishing provisions concerning the liability of, refunds by and damages to be paid by service providers to customers.

## **PART X**

### **TELECOMMUNICATIONS EQUIPMENT**

**60. Telecommunications Equipment**—(1) The Regulator may issue an order to do one or more of the following:

- (a) decide that certain types of telecommunications equipment proposed to be attached to telecommunications network that are used to provide telecommunications service to the public require approval for such attachment;
- (b) publish criteria for certification and establish standards for approval of telecommunications equipment for use in connection with telecommunications services or telecommunications networks;
- (c) identify domestic or foreign organizations or testing facilities for approval of telecommunications equipment for use in connection with telecommunications service or telecommunications networks; and

- (d) maintain a register of certified or approved types of telecommunications equipment, criteria for certification and standards for approval.
- (2) Marketing or selling telecommunications equipment is not subject to authorized except as provided in this section.
- (3) The Regulator may enter into mutual recognition agreements with authorities in other countries to provide for mutual recognition of, certification and approval of telecommunications equipment in other countries and/ or Samoa.

## **PART XI** **NUMBERS**

**61. National Numbering Plan-**(1) By order the Regulator shall prepare, publish and manage a National Numbering Plan and shall assign numbers and number ranges to service providers and customers in accordance with the National Numbering Plan.

(2) In preparing and managing the National Numbering Plan, the Regulator shall have due regard for the existing allocation and assignment of numbers.

(3) The National Numbering Plan shall take into account any existing or proposed regulation for the establishment of fees for telecommunications numbers under section 10.

(4) The Regulator may modify the National Numbering Plan by publishing a notice to customers and service providers at a reasonable time prior to the date when the modification is to me into force.

(5) The National Numbering Plan shall be consistent with the requirements of international agreements, commitments, conventions, regulations and recommendations to which Samoa has subscribed or is otherwise subject to.

(6) All service providers shall be required to use numbers assigned to them by the Regulator in accordance with the National Numbering and shall ensure that these numbers are used efficiently and in accordance with the National Numbering Plan.



**62. Use of Numbers-**(1) Service providers and customers shall not have any property rights in numbers.

(2) A service provide shall only change a customer's number:

- (a) on request of the customer;
- (b) if a fixed service customer's location changes;
- (c) if the change is required by the National Numbering Plan; or
- (d) if the service provider has reasonable grounds for doing so and if the service provider has given reasonable advance written notice to the customer in question, stating the reason for and anticipated date of the change. In cases of emergency, oral notice with subsequent written confirmation shall be sufficient.

**63. Number Portability-**(1) The Regulator may, after consultation with affected service providers and other interested parties, issue an order directing one or more service providers to develop or to assist in the development of a number portability implementation plan, for approval and implementation by order of the Regulator.

(2) In considering whether to implement number portability, the Regulator shall have due regard to the costs of such portability and the availability of technology that permits such portability in Samoa on a cost-effective basis.

(3) The costs of the Regulator in developing introducing number portability and the ongoing costs of administering number portability shall be recovered from service providers in accordance with applicable rules or orders.

**64. Service Provider Selection-**(1) The Regulator may, after consultation with the affected service providers and other interested parties, issue an order directing one or more service providers to develop or to assist in the development of a service provider selection or service provider pre-selection plan, for approval and implementation by order of the Regulator.

(2) In considering whether to implement service provider selection or service provider pre-selection, the Regulator shall

have due regard to the costs of such capabilities and the availability of technology that permits the intended capabilities on a cost-effective basis.

(3) The costs of the Regulator in developing and introducing service provider selection or service provider in accordance with applicable rules or orders.

## **PART XII**

### **ACCESS TO PROPERTY**

**65. Access to Government Land and Facilities-**(1) Where a service provider cannot, on commercially reasonable terms:

- (a) obtain the consent of the Government or a Government Agency or Authority having jurisdiction over government land or a government facility to construct, maintain or operate telecommunication network facilities on such land or facility; or
- (b) gain access to a pole, duct, tower or other supporting structure of a telecommunications, electrical power or other utility transmission system constructed on Government land or a Government facility, or which is owned or controlled by the Government or a Government Agency or Authority,

the service provider may apply to the Regulator for assistance.

(2) Upon receipt of an application for assistance in accordance with subsection (1), the Regulator shall consult with the Government, Government Agency or Authority and attempt to find a solution acceptable to both service provider and the Government, Government Agency or Authority, as the case may require.

(3) If the Regulator's actions under subsection (2) fail to produce an agreement between the parties involved:

- (a) the Regulator may exercise such other powers under this Act or other Acts, as the Regulator considers appropriate to resolve the matter; or

(b) the matter may be submitted by the Regulator or a party to the Ombudsman for an order by the Ombudsman to grant or refuse the required consent or access, as the case may be, on such terms and conditions as the Ombudsman may determine. In determining the matter the Ombudsman shall have regards to:

(i) the objectives of the Act set out in section 3;

(ii) any submission provided by the Regulator or the parties;

(iii) the likely effect and consequences of any decision to grant or refuse the required consent or access on the parties, the public and any customers of the service provider; and

(iv) any other relevant matter.

(4) The parties to any order made by the Ombudsman under subsection (3) shall comply with such order as if the order had been made by the Regulator.

(5) Where the Ombudsman issues an order granting the use of or access to Government land or facilities under subsection (3), the Ombudsman shall include in the order the amount which the service provider shall pay to the Government as compensation for the service provider's use of or access to Government land or facilities

**66. Access to Private Land and Facilities-(1)** Where a service provider:

(a) requires access to private land or private facilities (other than customary land or facilities located on customary land) to provide telecommunications services: and

(b) cannot, on commercially reasonable terms, reach an agreement for such access with the owner of the private land or private facility, the service provider may apply to the Regulator for assistance either in reaching an agreement with the owner of the

private land or private facility or for the exercise of other powers to obtain the required access.

(2) Upon receipt of an application for assistance in accordance with subsection (1), the Regulator shall take the steps the Regulator deems necessary to mediate between the concerned parties.

(3) If the Regulator's mediation under subsection (2) fails to produce an agreement between the parties involved:

(a) the Regulator may exercise such other powers under this Act or other Acts, as the Regulator considers appropriate to resolve the matter; or

(b) the matter may be submitted by the Regulator or a party to the Supreme Court or District Court for such court to make an order granting or refusing the required access on such terms and conditions as the court may determine, having regard to:

(i) the nature of the private land or private facilities;

(ii) the nature of the access required;

(iii) the importance of such access in maintaining or improving telecommunications services for Samoa;

(iv) whether any payment or other consideration can compensate the owner if access is ordered by the Court;

(v) the impact on the owner and other residents on the land or facilities if such access is ordered;

(vi) the objectives of the Act set out in section 3;

(vii) any submission provided by the Regulator or the parties; and

(viii) such other matters as the Court considers relevant.

(4) Subject to subsection (5), where the Supreme Court or District Court makes an order granting access under subsection (3), the Court shall include in the order what compensation (if any) the service provider shall pay to the owner of the private land or private facility.

(5) The provisions of the Taking of Land Act 1964 shall apply to this section with such adaptations and modifications as necessary.

**67. Access to Customary Land and Facilities-**(1) Where a service provider:

- (a) requires access to customary land or facilities located on customary land to provide telecommunications services, and
- (b) cannot, on commercially reasonable terms, reach an agreement with the person responsible for the customary land or facilities,

the service provider may apply to the Regulator for assistance either in reaching an agreement with the person responsible for the customary land or facilities or for the exercise of other powers to obtain the desired access.

(2) Upon receipt of an application for assistance in accordance with subsection (1), the Regulator shall take the steps the Regulator deems necessary to mediate between the concerned parties.

(3) If the Regulator's mediation under subsection (2) fails to produce an agreement between the parties involved:

- (a) the matter may be submitted by the Regulator or a party to the Ministry of Natural Resources and Environment or the Land and Titles Court for resolution under this Act or the Alienation of Customary Land Act 1965 or the Taking of Land Act 1964, or other Acts and procedures dealing with customary land;
- (b) if the matter is dealt with under paragraph (a), the Regulator may provide such reasonable assistance the Regulator deems necessary as part of the process of dealing with the customary land, including the making of an order certifying whether the purpose for which the land or facilities is required is a public purpose under the Taking of Land Act 1964; and

- (c) the Regulator may exercise such other powers under this Act or other Acts as the Regulator considers appropriate to resolve the matter.

(4) Despite any other law, if the matter is before the Land and Titles Court, the Court shall have the jurisdiction to make an order granting or refusing the required access on such terms and conditions as the Court may determine, having regard to:

- (a) the nature of the customary land or facilities;
- (b) the nature of the access required;
- (c) the importance of such access in maintaining or improving telecommunications services for Samoa;
- (d) whether any payment or other consideration can compensate the owner if access is ordered by the Court;
- (e) the impact on the owner and other residents on the land or facilities if such access is ordered;
- (f) the objectives of the Act set out in section 3;
- (g) any submissions provided by the Regulator or the parties; and
- (h) such other matters as the Court considers relevant.

(5) Subject to subsection (5), where the Land and Titles Court makes an order granting access under subsection (3), the Court shall include in the order what compensation (if any) the service provider shall pay to the person responsible for the customary land or facilities.

(6) The provisions of the Taking of Land Act 1964 shall apply to this section with adaptations and modifications as necessary.

**68. Co-location-(1)** Service providers with existing telecommunications network facilities shall allow other service providers to co-locate their telecommunications network facilities on those existing facilities, including but not limited to exchange premises and other switching equipment locations, land, roof tops, mast sites, towers, conduits and poles, where such co-location is economically feasible and no major additional construction work is required.

(2) The party requesting co-location shall compensate the party required to provide co-location for such an amount as the parties may agree or, where the parties are unable to agree, as may be determined by the Regulator.

(3) Where the parties are unable to agree on the conditions of co-location, either or both parties may apply to the Regulator to mediate and, if mediation fails, the Regulator may issue an order to resolve any outstanding issues between the parties.

(4) Prior to making an order under subsection (3), the Regulator shall take into account any comments submitted by the parties, including any issues raised in those comments relating to safety or interference with the parties' networks and personnel.

### **PART XIII**

### **NATIONAL SECURITY AND PUBLIC EMERGENCIES**

**69. National Security-**(1) Despite any other law, a service provider shall comply with any written request, direction or other requirement of the Attorney General regarding access to any part of the service provider's telecommunications network or telecommunications services or related information in connection with national security requirements or the prevention, detection or prosecution of any breach of the laws of Samoa.

(2) A service provider shall provide any facilities or capabilities, required for compliance with subsection (1) at the service provider's expense, but may apply to the Regulator for an order dealing with the treatment of any substantial additional expense. The Regulator may consider such application in connection with any tariff approval application or recovery of the costs of universal access obligations, and make an order regarding the recovery of such additional expense.

(3) For the purposes of subsection (1), the Attorney General may determine that any event or matter concerns national security or the prevention, detection or prosecution of any breach of the laws of Samoa.

**70. Public Disaster and State of Emergency-(1)** In case of a public disaster or state of emergency, service providers shall comply with any directions issued by the Commissioner of Police and/or the Chief Executive Officer of the Ministry responsible for disaster co-ordination to respond to or alleviate problems faced by the public or the Government related to such disaster or emergency.

(2) Service providers may apply to the Regulator for compensation or other assistance with the demonstrated costs of complying with subsection (1), but not for loss of revenues during any period of service suspension. The Regulator shall consider any such application in accordance with this Act and other applicable laws of Samoa, and may make an order regarding the recovery of such costs.

(3) For the purposes of subsection (1), the Commissioner of Police and/or the Chief Executive Officer of the Ministry responsible for disaster co-ordination may determine that any event or matter is a public disaster.

#### **PART XIV** **DISPUTES, OFFENCES AND ENFORCEMENT**

**71. Service Provider Disputes-(1)** Where service providers have been unable to agree on the resolution of a matter that is related to the Regulator's powers under this Act or other laws of Samoa, then following reasonable efforts to reach an amicable settlement, one or more service providers may apply to the Regulator for assistance in resolving the dispute.

(2) In response to any referral under subsection (1), the Regulator may:

- (a) assign a member of the Regulator's staff or consultant to attempt to mediate the dispute;
- (b) refer the dispute to the Supreme or District Court; or
- (c) issue an order to resolve the dispute.

**72. Customer Disputes-(1)** Where a customer, other than a service provider that the parties have been unable to resolve among themselves, by means of the service provider's customer complaint process or otherwise, including any process approved



by the Regulator pursuant to section 52, either party may refer the dispute to the Regulator for assistance.

(2) In response to any referral under subsection (1), the Regulator may:

- (a) assign a member of the Regulator's staff or consultant to attempt to mediate the dispute;
- (b) refer the dispute to the Supreme or District Court; or
- (c) issue an order to resolve the dispute.

**73. Alternative Dispute Resolution-**(1) Parties to a dispute may agree to refer a dispute a dispute to private mediation or arbitration.

(2) The Regulator's costs under subsection (1), including but not limited to any travel or other expenses incurred by or on behalf of the Regulator in connection with the Regulator's assistance or intervention, shall be paid to the Regulator by the parties to the dispute.

**74. Telecommunications and Computer Offences-**(1) No person shall:

- (a) fraudulently, maliciously, or with dishonest or otherwise unlawful intent, use or attempt to obtain any telecommunications service without payment of the lawful charge therefore;
- (b) intentionally, without right and with dishonest or otherwise unlawful intent, access or attempt to access the whole or any part of a telecommunications network or computer system by infringing security measures, with the intent of obtaining telecommunications or computer data;
- (c) intentionally, without right and with dishonest or otherwise unlawful intent, intercept or attempt to intercept a transmission not intended for public reception of telecommunications or computer data to, from or within a computer system;
- (d) intentionally, without right and with dishonest or otherwise unlawful intent, damage, delete, deteriorate, alter or suppress or attempt to

damage, delete, deteriorate, alter or suppress telecommunications or computer data;

- (e) intentionally, without right and with dishonest or otherwise unlawful intent, hinder or disrupt or attempt to hinder or disrupt the functioning of a telecommunications network or computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing telecommunications or computer data;
- (f) intentionally, without right and with dishonest or otherwise unlawful intent, use, possess, produce, sell, procure for use, import, distribute or otherwise make available or attempt to use, possess, produce, sell, procure for use, import, distribute or otherwise make available a device, including but not limited to a computer program, for the purpose of committing any of the offences established in paragraphs (a), (b), (c), (d) or (e);
- (g) intentionally, without right and with dishonest or otherwise unlawful intent, use, possess, produce, sell, procure for use, import, distribute or otherwise make available or attempt to use, possess, produce, sell, procure for use, import, distribute or otherwise make available a computer password, access code or similar data by which the whole or any part of a telecommunications network or computer system is capable of being accessed with intent that such network or system be used for the purpose of committing any of the offences established in paragraphs (a), (b), (c), (d) or (e);
- (h) use, or cause or suffer to be used, or attempt to use or cause or suffer to be used, any telecommunications network for the purpose of disturbing, annoying, irritating, offending or harassing any person by any means, including but not limited to: